

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

CIVIL ACTION NO: 14-00029-AB

BAP ADMINISTRATOR STATUS REPORT – 2ND QUARTER 2019

1. Garretson Resolution Group serves as the Baseline Assessment Program (BAP) Administrator (“the Administrator”) for the Settlement program in the above-captioned action.¹ Since its appointment by the Court to serve in this role, the Administrator has worked diligently with the Parties to meet its responsibilities under the Settlement Agreement. The Administrator submits this Status Report to provide an update to the Court on the status of the Administrator’s work implementing the BAP.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

Maintaining the Qualified BAP Provider Network

2. In implementing the BAP, the Administrator is responsible for establishing and maintaining a network of Qualified BAP Providers to administer the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits program.

3. As of May 13, 2019, the Administrator has contracted with 324 Qualified BAP Providers in fifty-two cities across the United States. The Administrator is seeking the participation of an additional fifty neurologists and clinical neuropsychologists, including:

- a. seventeen providers who have been approved for participation by Co-Lead Class Counsel and Counsel for the NFL Parties and are now in the contracting process; and
- b. thirty-three providers who are being vetted for participation by Co-Lead Class Counsel and Counsel for the NFL Parties.

4. The Administrator is continuing its efforts to enroll Qualified BAP Providers to expand the BAP network wherever necessary to ensure sufficient depth of coverage and improve the efficiency of this program. For cities without a sufficient number of contracted Qualified BAP Providers to fully meet demand, the Administrator continues to seek alternate arrangements to ensure timely appointments for Retired NFL Football Players, including offering appointments in nearby cities and bringing in Qualified BAP Providers from other cities to administer baseline assessment examinations. The Administrator has been able to schedule appointments in nearby cities for Retired NFL Football Players from several metropolitan areas with tight Qualified BAP Provider capacity, including those from Indianapolis (who were scheduled with Qualified BAP Providers in Louisville), Chicago (Milwaukee), Cincinnati (Columbus and Louisville), Nashville (Birmingham and Memphis), Richmond (Washington, DC), San Antonio (Austin), and

Sacramento (San Francisco). The Administrator has also accommodated demand for clinical neuropsychology appointments by bringing in Qualified BAP Providers from other cities to several metropolitan areas with tight capacity, including Dallas, Cincinnati, Seattle, and New Orleans.

Baseline Assessment Examinations Scheduled and Attended to Date

5. The BAP offers a two-part baseline assessment examination, consisting of a clinical neuropsychology appointment lasting an average of six to eight hours and a basic neurological examination lasting approximately one hour. The Administrator's scheduling process is intended to ensure that Retired NFL Football Players are scheduled at a provider location, date, and time acceptable and convenient to them. Typically, the Administrator attempts to schedule the clinical neuropsychology appointment so that it occurs first, and far enough in advance of the neurology appointment, that the clinical neuropsychologist's report is available for review during the neurology appointment.

6. As of May 13, 2019, the NFL Concussions Settlement Claims Administrator has determined that 12,830 Retired NFL Football Players are eligible for participation in the BAP. Of these individuals, the Administrator has received requests to schedule baseline assessment examinations from 6,017 Retired NFL Football Players directly or through their attorneys. This represents 47% of BAP-eligible Retired NFL Football Players.

7. Of the 6,017 Retired NFL Football Players who have requested appointments, the Administrator has offered one or more appointments with Qualified BAP Providers to 5,870 of them (97.6%). Retired NFL Football Players who have requested appointments have waited a median time of 16 days until the Administrator secured and offered a neuropsychology appointment (consisting of a specific date, time, and location) from a Qualified BAP Provider neuropsychologist. To ensure the neuropsychology appointment takes place before the neurology appointment, the Administrator seeks to confirm with the Retired NFL Football Player or his

attorney that the Retired NFL Football Player accepts the offered neuropsychology appointment before securing a neurology appointment. As a result of these activities, the median time between the initial offer of a neuropsychology appointment and the initial offer of a neurology appointment is 39 days. Median time from the initial request until the actual neuropsychology appointment is 106 days; the median time from request until the actual neurology appointment is 172 days. Table 1 summarizes wait times as of May 13, 2019.

Table 1. Appointment Scheduling Wait Times

Metric	Median in Days
Time from request to offered neuropsychology appointment	16
Time from request to offered neurology appointment	55
Time from request to neuropsychology appointment date	106
Time from request to neurology appointment date	172

8. As of May 13, 2019, 4,906 Retired NFL Football Players (81.5% of those who have requested appointments) have attended a total of 9,281 appointments. This number consists of 4,190 Retired NFL Football Players (69.6%) who have attended two or more² appointments and 716 Retired NFL Football Players (11.9%) who have attended one appointment.

9. Of the 5,870 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 5,356 (89.0% of those who have requested appointments) currently have one or more appointments scheduled (including appointments that have already taken place). Of the 5,356 Retired NFL Football Players with scheduled appointments, 4,579 (76.1% of all who have requested) have been scheduled for both neuropsychology and neurology appointments, and 777 (12.9% of all who have requested) have

² Certain Retired NFL Football Players have attended more than two appointments because they and/or the Qualified BAP Providers have requested to break up the clinical neuropsychology appointments, which the Administrator has accommodated.

been scheduled for one appointment. For the latter group, the Administrator is working to promptly schedule these Retired NFL Football Players' second appointment.

10. Of the 5,870 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 514 have had at least one appointment scheduled or offered to them in the past but did not accept or attend. These 514 Retired NFL Football Players have had a total of 2,015 rejected, cancelled, or missed appointments (an average of 3.9 each). Table 2 breaks down the reasons and sources of those cancellations.

Table 2. Cancellation Reasons – Players with No Active Appointments

Cancellation Reason	Source		
	Player	Provider	Administrator
Confirmed, then Cancelled	15.7%	5.0%	1.8%
Rejected or Withdrawn	55.9%	9.0%	4.5%
Missed	8.1%	0.0%	0.0%

Roughly half of these Retired NFL Football Players reside in or near ten cities – Atlanta, Dallas, Houston, Los Angeles, New Orleans, Jacksonville, Phoenix, Tampa, Charlotte, and Miami – all of which are among the cities with the highest populations of Retired NFL Football Players. The median time from request to clinical neuropsychology appointment offered in these cities ranges from four days in Houston to 87 days in New Orleans, with an average of 24 days.³ In all such cases, the Administrator is continuing to work with Qualified BAP Providers, and Retired NFL Football Players or their attorneys, to ensure Retired NFL Football Players receive appointments that meet their preference for location, provider, and schedule, while accommodating the Qualified BAP Providers' schedules.

³ As noted in paragraph 4, in addition to continuing to seek the participation of more Qualified BAP Providers in New Orleans, the Administrator is bringing in Qualified BAP Providers from other cities to supplement provider capacity.

11. Finally, 147 (2.4%) Retired NFL Football Players have requested baseline assessment examinations but have not yet had appointments scheduled or offered to them. These Retired NFL Football Players are scattered among 32 cities; the median time they have been waiting since requesting their baseline assessment examination is 16 days. The Administrator continues to work to secure appointments for these Retired NFL Football Players and will continue to update its progress accordingly. Table 3 summarizes Retired NFL Football Players with requests and appointments scheduled through May 13, 2019.

Table 3. Summary of Requests and Scheduling Activity to Date

Status	Number	% of Requested
Players requesting participation in BAP	6,017	100.0%
Players offered one or more appointments	5,870	97.6%
Players with two appointments currently scheduled	4,579	76.1%
Players with one appointment currently scheduled	777	12.9%
Players with appointments previously offered but none attended or currently scheduled	514	8.5%
Players waiting for their first offered appointments	147	2.4%

Note: Indented rows are subsets of rows above.

Providing Reports from Baseline Assessment Examinations

12. As part of its efforts to ensure prompt and accurate production of medical records and reports, the Administrator conducts training sessions and offers guidance materials to each Qualified BAP Provider. The Administrator is also in regular contact with Qualified BAP Providers as questions or issues arise that may slow the production of medical records and reports. Importantly, to provide incentives for Qualified BAP Providers to submit medical records and reports in a timely manner, the Administrator included a provision in all of its Qualified BAP

Provider contracts that makes provider payment contingent on the Qualified BAP Providers submitting such documents.

13. Since inception of the BAP, the Administrator has received BAP-generated medical records and reports from at least one specialist (neurologist or clinical neuropsychologist) for 4,654 Retired NFL Football Players, including records and reports from both specialists for 3,666 Retired NFL Football Players, and records from one specialist for 988 Retired NFL Football Players.

14. After the Administrator receives the medical records and reports, the Administrator reviews them for accuracy and completion, particularly against the requirements of the Settlement Agreement.

15. When either the records or reports are incomplete, the Administrator works with the Qualified BAP Provider to ensure completion. The most common reasons for such follow-ups with providers include:

- a. failure to clearly state what, if any, Neurocognitive Impairment level the Retired NFL Football Player qualified for, as defined by the Settlement Agreement;
- b. omission of references to corroborating evidence, as required for diagnosing Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment under the Settlement;
- c. failure to adequately address test validity and/or functional impairment, two topics required to be reported by clinical neuropsychologists as part of their reports; and

- d. failure to meet other administrative requirements as articulated in the Clinician's Interpretation Guide promulgated pursuant to Exhibit A-2 of the Settlement Agreement.

16. Of the 3,666 Retired NFL Football Players for whom both reports have been submitted by Qualified BAP Providers, the Administrator has completed its review process for 2,872 and has published them (or is in the process of publishing them) to the Retired NFL Football Player's online portal. Table 5 shows the status for Retired NFL Football Players whose reports have been submitted to the Administrator as of May 13, 2019.

Table 4. BAP Report Review Status

Status	Number	% of Players with Both Appts Attended
Players who have attended both appointments	4,190	100.0%
Players with both reports submitted to the Administrator	3,666	87.5%
Players with review completed and approved to publish to portal	2,872	68.5%
Players with reports undergoing initial review	66	1.6%
Players with reports in follow up status with Qualified BAP Providers	687	16.4%
Players with reports forwarded to Appeals Advisory Panel due to conflicting diagnoses between Qualified BAP Providers (per the Settlement Agreement)	41	1.0%

Note: Indented rows are subsets of rows above.

17. As of May 13, 2019, BAP examinations have resulted in 89 diagnoses of Level 1 Neurocognitive Impairment, 100 diagnoses of Level 1.5 Neurocognitive Impairment, 65 diagnoses of Level 2 Neurocognitive Impairment, with 2,618 Retired NFL Football Players receiving no diagnosis.

BAP Supplemental Benefits

18. Under the Settlement Agreement, a Retired NFL Football Player diagnosed with Level 1 Neurocognitive Impairment is eligible to receive BAP Supplemental Benefits related to the Retired NFL Football Player's impairment in the form of medical treatment, counseling, and/or examination by Qualified BAP Providers, including pharmaceuticals if medically appropriate and prescribed by a Qualified BAP Provider.

19. The Settlement Agreement required Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, to establish the maximum per-player benefit under the BAP Supplemental Benefits on the first anniversary of the commencement of the BAP. Accordingly, on June 6, 2018 (the first anniversary of the commencement of the BAP), Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, established the maximum per-player benefit under the BAP Supplemental Benefits at \$35,000. Given the number of Retired NFL Football Players currently eligible for the BAP, this amount was determined to be the maximum benefit that will ensure sufficient funds to pay for all possible baseline assessment examinations, which in turn ensures the overall sufficiency of the BAP Fund. Co-Lead Class Counsel and Counsel for the NFL Parties have agreed to revisit this amount after June 6, 2019, the date when eligibility for baseline assessment examinations expires for Retired NFL Football Players born on or before June 6, 1974.

20. Once a Retired NFL Football Player's diagnosis of Level 1 Neurocognitive Impairment is finalized, the Administrator contacts the Retired NFL Football Player (or, in the case of a represented Retired NFL Football Player, his attorney) to inform him of his eligibility and schedule an orientation. Given that Retired NFL Football Players eligible for the BAP Supplemental Benefits suffer from moderate cognitive impairment, the Administrator seeks to include a family member or close friend of the Retired NFL Football Player during scheduling

who can help the Retired NFL Football Player maximize program benefits. During this orientation, the Administrator outlines the benefits offered and solicits the Retired NFL Football Player's choice of a Qualified BAP Provider neurologist to perform an initial consultation. The purpose of the initial consultation is to review the results of the baseline assessment examination and determine a treatment and evaluation plan for the Retired NFL Football Player. Table 6 show the status of Retired NFL Football Players who have been notified of their eligibility for participation in the BAP Supplemental Benefits.

Table 5. BAP Supplemental Benefits Participation Status

Status	Number
Retired Players/Attorneys notified of BAP Supplemental Benefits eligibility	85
Awaiting attorney response to schedule orientation	9
Retired Players in scheduling process for orientations	10
Retired Players with upcoming orientations scheduled	2
Retired Players with orientation complete	64
Awaiting provider selection by Retired Player	13
Contracting with selected provider	6
In process of scheduling initial consultation	3
Initial consultation upcoming	13
Initial consultation attended/receiving ongoing benefit	29

Note: Indented rows are subsets of rows above.

Respectfully submitted,

BAP ADMINISTRATOR

By:



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